IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 478 of 2005

HONOURABLE MR.JUSTICE ANIL R. DAVE

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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THE STATE OF GUJARAT - Appellant(s)
Versus
DHARMENDRASINH NIRUBHA JADEJA - Opponent(s)

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Appearance :
MR KT DAVE, APP, for Appellant
MR PRATIK Y JASANI for Respondent

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CORAM : HONOURABLE MR.JUSTICE ANIL R. DAVE

and

HONOURABLE MR.JUSTICE KS JHAVERI

Date : 25/04/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE KS JHAVERI)

1.0 This appeal is directed against judgement and order dated 25th June 2004 by Additional Sessions Judge, 5th Fast Track Court, Rajkot, in Sessions Case No.57 of 1996 whereby the Sessions Court has convicted the present-respondent for offence under section 498-A and 306 and 506(2) of IPC. For the offence punishable under section 498-A of IPC the respondent was sentenced to suffer rigorous imprisonment for one year and a fine of Rs.500/-, in default to undergo further rigorous imprisonment for three months, for offence punishable under section 306 of IPC the respondent was sentenced to suffer rigorous imprisonment for three years and a fine of Rs.1000/-, in default to undergo further rigorous imprisonment for six months and for offence punishable under section 506(2) of IPC the respondent was sentenced to suffer rigorous imprisonment for one year and a fine of Rs.200/-, in default to undergo rigorous imprisonment for three months. The Sessions Court has ordered to run all the sentence concurrently.

2.0 The prosecution case, in a nutshell are as under:

2.1 One Smt. Kanakba had filed a complaint before Rajkot Taluka Police Station on 8th November 1995 against her husband

Dharmendrasinh Nirubha, the present opponent. In the complaint she stated that she was doing labour work and residing in Slum Quarter No.307, Raiyadhar, Rajkot along with her two children, namely Giriraj and Minaba; that she is maintaining herself and her two children by doing labour work at different houses; that her husband is residing separately with her mother-in-law; that he is not paying her any maintenance and he has illicit relation with neighbour Rasilaben Darji. She further stated that her husband used to stop her on the way to work and beat her and threatened her to kill and because of such harassment on 8th November 1995 she sprinkled kerosene on herself and lit her fire. The said complaint has been registered as C.R. No.I 572 of 1995 at Rajkot Taluka Police Station under section 498-A and 506(2) of IPC. The said Kanakba thereafter succumbed to the injuries sustained by her and therefore section 306 of IPC has been inserted in the complaint.

2.2 After investigation the police has filed chargesheet before learned Judicial Magistrate, First Class, Rajkot. The Judicial Magistrate, First Class, Rajkot, committed the case to the Sessions Court. The said case was registered as Sessions Case No.57 of 1996 before the Court of Additional Sessions Judge, 5th Fast Track Court, Rajkot. The Sessions Court after appreciating the evidence on record sentenced the respondent as stated hereinabove. The State has filed the present

appeal praying for enhancement of sentence passed by the learned Additional Sessions Judge.

3.0 Mr. K.T. Dave, learned APP appearing for the appellant State submitted that the order of sentence as imposed by the Sessions Court is unduly lenient and grossly inadequate. He submitted that looking to the dying declarations and other materials on record the sentence imposed by the Sessions Court is inadequate and requires to be enhanced. He further submitted that there are ample materials on record to show that the opponent was torturing the deceased, as a result of which she had committed suicide. He, therefore, submitted that the present appeal is required to be allowed.

4.0 Mr. P.Y. Jasani, learned Advocate appearing for the respondent submitted that the Sessions Court has appreciated the evidence in detail and the State has not pointed anything from the record to take a contrary view of the matter. He, therefore, submitted that the appeal deserves to be dismissed.

6.0 It is not in dispute that Kanakba died of burns injuries. The evidence of Dr. M.A. Khebar (PW2) who carried out the postmortem on 13.11.1995 shows that Kanakba had received 25% to 30% degree burns the cause of death of Kanakba was shock due to burns.

7.0 Dr. M.A. Khebar (PW-2) has been examined at Exh.13. He stated that he was serving as a Medical Officer in Government Hospital at Rajkot. He has conducted the postmortem on the dead body of Kanabha at 10.10 on 13.11.1995. According to him 25% to 30% burn injuries were on the dead body. He stated that Kanakba died because of the burn injuries sustained by her. He has produced Postmortem note at Exh.14. In his cross examination he has stated that the skin of both the hands of the deceased was detached, there were bandages on the hands of the dead body and there were first and second degree burn injuries on the dead body. This witness has stated that the cause of death of deceased was shock due to burn injuries.

8.0 The postmortem note Exh.14 reveals that deceased Kanakba had sustained 25% to 30% burn injuries and Dr.M.U. Khebar has stated that the cause of death of Kanakba was shock due to burn injuries.

9.0 The Panchnama is at Exh.23. On perusal of the panchnama of scene of offence, it reveals that the alleged incident occurred in Raiyadhar Slum Quarter No.307, the stove having half litre kerosene and one utensil and match-box were lying there and 2-3 pieces of Sari were also found there. There was also kerosene in the utensil. The Panch Girishbhai Parsottambhai has been examined at Exh.22 who

stated that the police had called him to act as a panch in Raiyadhar Slum Quarter No.307.

10.0 One Rajkunverba Danubha (PW1) was examined at Exh.11 and one Manjulaben Muljibhai (PW4)was examined at Exh.19. From their evidence it revealed that Kanakba has sustained burns and she passed away because of the burns. It was found that Kanakba committed suicide by sprinkling kerosene on herself and set her fire. There is nothing on record to suggest that the death of Kanakba was mental or homicidal.

11.0 Mohanbhai Kalabhai (PW 10) has been examined at Exh.37. He has stated that on 8th November 1991 he was on duty as a Head Constable in Hospital Police Chowki. The peon asked him to go to MLC Branch of Hospital as the hospital has received an emergency case. He had therefore gone to the emergency department along with the register. He has seen one lady having burns. He has asked the name of that lady who replied her name as Kanakba Dharmendrasinh Jadeja. She told him that in the evening at about 7.30 pm she has sprinkled kerosene on herself and set her ablaze. She had also stated that the cause of sustaining burns is that her husband Dharmendrasinh has an illicit relation with neighbour Rasilaben since last three years, he has taken away her two children from her and she does not know as to

where her husband had taken her children. Accordingly this witness has made the entries.

12.0 The prosecution has examined Executive Magistrate Mr. Jethabhai Haklabhai (PW 8) at Exh.26. He stated that on receipt of Police Yadi he reached the Hospital. According to him Kanakba was fully conscious. He has recorded the Dying Declaration of Kanakba. The doctor on duty has also made an endorsement that Kanakba was conscious at the time of giving dying declaration. The dying declaration is at Exh.28. It is therefore evident that at the time of giving dying declaration Kanakba was conscious. In the dying declaration she has stated that on the day of the incident, in the evening, she had sprinkled kerosene on herself because her husband Dharmendrasinh, who is plying rickshaw came to her house and took with him her two children. She stated that her husband has illicit relation with Rasilaben Darji and he used to torture her. She has also stated that on that day in the morning her husband took with him her two children and has caused cruelty towards her and therefore she had sprinkled kerosene on herself and set her ablaze. She had asserted that because of the cruelty caused to her by her husband, she has taken this step. This dying declaration bears left hand thumb impression of Kanakba and also the signature of Executive Magistrate. The doctor has also made an

endorsement on the dying declaration that the patient was conscious.

13.0 From the dying declartion it reveals that her husband Dharmendrasinh has an illicit relation with neighbour Rasilaben and he used to cause constant cruelty towards Kanakba and has fetched two children of Kanakba. Nothing is pointed out from the record to disbelieve the dying declaration. We are of the opinion that the Sessions Court was justified in holding that the two dying declarations, one oral and another written, are reliable and trustworthy.

14.0 As per deposition of the doctor, coupled with the inquest panchmana, postmortem report, panchnama of scene of offence, it is proved beyond reasonable doubt that Kanakba had committed suicide. None of the witness had stated that Kanakba had died because of accidental injuries. From the totality of the evidence it is found that the opponent is the father of the children, but he was not maintaining them. He has taken the custody of the children from his wife with a view to keep them with him. It is on that day the deceased had sprinkled kerosene on her and set her ablaze. It is also required to be noted that the relatives of the deceased had reached the hospital after four days of the incident Therefore they had no opportunity to teach the deceased about the dying declaration.

15.0 From the evidence on record it is proved that the opponent has instigated and aided the deceased to commit suicide. The Sessions Court has come to a conclusion that the prosecution has proved beyond reasonable doubt that the respondent has caused physical and mental cruelty towards Kanakba which led her to end her life.

16.0 In view of the above discussion, it is found that the dying declarations are trustworthy, the opponent was threatening her. Caused physical and mental cruelty to Kanakba which led her to end her life. The learned Sessions Judge was, therefore justified in relying on the dying declarations for convicting the respondent of the offence under section 498-A, 306 and 506(2) of IPC.

17.0 Looking to the evidence on record it is true that the deceased has committed suicide. At the same time it is also required to be noted that it is not established that the accused were present at the time of the incident. Though the opponent is held to be guilty, we are of the opinion that the State has failed to point out that the sentence imposed by the Sessions Court is on the lower side, which requires enhancement. It is also required to be noted that the opponent is a rickshaw driver and has old mother and two children to look after. We are therefore of the view

that the punishment as imposed by the Sessions Court is just and proper. No interference is called for in the appeal. The appeal, therefore, fails and is dismissed.

[ANIL R. DAVE, J.]

[K.S. JHAVERI, J.]

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